

SENATE BILL 3453

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 59
and Title 69, relative to coal mining.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Responsible Coal Operators Act of 2012".

SECTION 2. Tennessee Code Annotated, Section 69-3-108(f), is amended by adding the following as a new subdivision:

(3)

(A) As used in this subdivision (f)(3), unless the context otherwise requires:

(i) "Applicant" means any person, as defined in § 69-3-103 making application for the approval of a permit pursuant to this part;

(ii) "Compliance history" means a record of operation or ownership of a facility subject to this part; and

(iii) "Responsible party" means:

(a) Any individual who is an applicant, an officer or director of a corporation, partnership, or business association that is an applicant, or person with overall responsibility for operations of the site of a waste management unit subject to this part; or

(b) Any official or management committee member of the state or political subdivision thereof that is an applicant.

(B) The commissioner may refuse to issue or renew a permit issued pursuant to this part if the commissioner finds that the applicant or a responsible party has:

(i) Intentionally misrepresented or concealed any material fact which would have resulted in the denial of the application submitted to the commissioner;

(ii) Obtained a permit from the commissioner by intentional misrepresentation or concealment of a material fact which would have resulted in the permit being denied;

(iii) Been convicted of, or incarcerated for, a felony environmental criminal offense within three (3) years preceding the application for a permit for any violation of this part or title 59, or, in the case of an applicant with less than three (3) years of compliance history in this state, has been convicted of, or incarcerated for, a felony environmental criminal offense in another jurisdiction;

(iv) Evidenced a pattern of violations of this part or title 59, and rules or regulations promulgated pursuant thereto, or had an order for a violation of this part or title 59 entered against it which violation is unabated, or, in the case of an applicant with less than three (3) years of compliance history in this state, has evidenced a pattern of violations of water quality or mining laws, rules or regulations or outstanding enforcement actions for unabated or unremediated violations in another state;

(v) Been adjudicated in contempt of any order of any court of this state enforcing a pattern of violations of this part or title 59, or has been

incarcerated for such contempt within the three (3) years preceding the application for a permit or, in the case of an applicant with less than three (3) years of compliance history in this state, has been adjudicated in contempt of any order of any court enforcing a federal or water quality or mining law; or

(vi) Been convicted of a violation of either state or federal racketeer influenced and corrupt organization (RICO) statutes.

(C)

(i) An applicant that has three (3) or more years of compliance history in this state shall submit, at the time of application, a statement to the effect that neither the applicant nor any responsible party has been convicted of a felony, been incarcerated or been adjudicated in contempt of court as described in subdivisions (f)(3)(B)(iii)-(vi) or alternatively list any applicable conviction, term or incarceration, or adjudication of contempt. The applicant may submit information or documentation related to such violations, convictions, incarcerations, or adjudications.

(ii) An applicant with less than three (3) years of compliance history in this state shall submit, at the time of application, a compliance history disclosure form prepared by the commissioner. The form shall include the information required for applicants with three (3) or more years of compliance history in this state, and additionally require a listing of the names, social security numbers, taxpayer identification numbers and business addresses of the responsible parties for the regulated activities of the applicant, along with a description of any offenses identified in subdivisions (f)(3)(B)(iii)-(vi).

(iii) In making the decision to issue, renew or deny any such permit, the commissioner shall determine pursuant to this subdivision (f)(3) whether any such material misrepresentation, concealment, conviction or adjudication demonstrates a disregard for environmental regulations or a pattern of prohibited conduct. In making any finding under this subdivision (f)(3), the commissioner shall consider the following factors and the applicant may submit information or documentation related to the following:

- (a) The nature and seriousness of the offense;
- (b) The circumstances in which the offense occurred;
- (c) The date of the offense;
- (d) Whether the offense was an isolated offense or part of a series of related incidents;
- (e) The applicant's environmental record and history of compliance regarding waste management in this state;
- (f) The number and types of facilities operated by the applicant;
- (g) Any evidence that the applicant reported or investigated the offense itself and took action to halt or mitigate the offense;
- (h) Disassociation from any persons convicted of felony environmental criminal activity;
- (i) The payment by a party convicted of felony environmental criminal activity of restitution to any victims of such criminal activity, remediation of any damages to natural resources

and the payment of any fines or penalties imposed for such conduct; and

(j) Other corrective actions the applicant has undertaken to prevent a recurrence of the offense, including, but not limited to, the establishment and implementation of internal management controls.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.